

1 JAMES PATRICK SHEA
Nevada Bar No. 405
2 BART K. LARSEN
Nevada Bar No. 8538
3 KYLE M. WYANT
Nevada Bar No. 14652
4 **SHEA LARSEN**
5 1731 Village Center Circle, Suite 150
Las Vegas, Nevada 89134
6 Telephone: (702) 471-7432
7 Fax: (702) 926-9683
Email: jshea@shea.law
8 blarsen@shea.law
9 kwyant@shea.law

10 JENNIFER E. HOEKEL
Nevada Bar No. 12775
11 jennifer.hoekel@huschblackwell.com
12 **HUSCH BLACKWELL LLP**
8001 Forsyth Boulevard Suite 1500
13 St. Louis, Missouri 63105
Telephone: 314.480.1500
14 Facsimile: 314.480.1505

15 -and-

16 PATRICK M. HARVEY
17 *Admitted Pro Hac Vice*
Patrick.Harvey@huschblackwell.com
18 **HUSCH BLACKWELL LLP**
19 511 North Broadway, Suite 1100
Milwaukee, WI 53202
20 Telephone: 414.273.2100
21 Facsimile: 414.223.5000

22 *Attorneys for Plaintiff,*
23 *James V. Deppoleto Jr.*

24 **UNITED STATES DISTRICT COURT**
25 **FOR THE DISTRICT OF NEVADA**
26
27
28

JAMES V. DEPPOLETO JR.,
Individually and Derivatively on Behalf of
Nominal Defendant Takeover Industries
Incorporated

Plaintiff,

v.

TAKEOVER INDUSTRIES
INCORPORATED,
Defendant and Nominal Defendant

MICHAEL HOLLEY,

TOBY MCBRIDE,

JOSEPH PAVLIK,

TOM ZARRO,

and

NEXTGEN BEVERAGES, LLC

Defendants.

CASE NO. 2:22-cv-02013-GMN-MDC

**PLAINTIFF'S BRIEF IN OPPOSITION TO
DEFENDANTS' MOTION FOR LEAVE TO
FILE DOCUMENTS UNDER SEAL**

MEMORANDUM OF POINTS AND AUTHORITIES

Takeover Industries Incorporated ("Takeover"), Michael Holley ("Holley"), Tom Zarro ("Zarro"), and NextGen Beverages, LLC ("NextGen Beverages") (collectively, "Defendants") fall far short of satisfying the compelling reasons standard applicable to their Motion for Leave to File Documents Under Seal. (Dkt. No. 110.) Because the Defendants have not satisfied their burden, the Court should deny their Motion to Seal.

LEGAL STANDARD

Parties seeking to seal documents bear a heavy burden to overcome the presumption of access to court documents. "The presumption of access is 'based on the need for federal courts,

1 although independent – indeed, particularly because they are independent – to have a measure
 2 of accountability and for the public to have confidence in the administration of justice.”
 3 *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016). The Ninth
 4 Circuit applies one of two standards when a request to seal is made in connection with a
 5 motion: the “compelling reasons” standard, or the “good cause” standard. *Id.* at 1098-97. A
 6 party who seeks to seal documents attached to a dispositive motion must satisfy the
 7 “compelling reasons” standard because a dispositive motion is one that “is more than
 8 tangentially related to the underlying cause of action.” *Ctr. for Auto Safety*, 809 F.3d at 1098–
 9 99; *see also DelVecchia v. Frontier Airlines, Inc.*, No. 219CV01322KJDDJA, 2024 WL 95870,
 10 at *1 (D. Nev. Jan. 9, 2024) (applying compelling reasons standard to a motion to seal filed
 11 with a response to a motion for summary judgment).

12 Compelling reasons exist when “such court files might have become a vehicle for
 13 improper purposes, such as the use of records to gratify private spite, promote public scandal,
 14 circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179. The
 15 compelling reasons standard requires the moving party to identify “*compelling reasons*
 16 *supported by specific factual findings* . . . that outweigh the general history of access and the
 17 public policies favoring disclosure.” *Id.* at 1178–79 (emphasis added; internal quotation marks
 18 and citation omitted). The Court must then weigh the “‘relevant factors,’ base its decision ‘on a
 19 compelling reason,’ and ‘articulate the factual basis for its ruling, without relying on hypothesis
 20 or conjecture.’” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 679 (9th Cir. 2010). “Simply
 21 mentioning a general category of privilege, without further elaboration or any specific linkage
 22 with the documents” also does not satisfy the compelling reason standard. *Id.* at 1184. “A
 23 party’s failure to meet the burden of articulating specific facts showing a ‘compelling reason’
 24 means that the ‘default posture of public access prevails.’” *Est. of Nunez ex rel. Nunez v.*
 25 *County of San Diego*, 386 F. Supp. 3d 1334, 1336 (S.D. Cal. 2019).

27 ARGUMENT

28 The Court should deny Defendants’ Motion to Seal for the simple reason that they have

1 failed to meet the compelling reasons standard. Defendants have requested to seal a slide deck
 2 that Takeover allegedly presented to another beverage company while pitching a joint business
 3 opportunity in 2022.¹ However, Defendants have not articulated any reason why the slide deck
 4 should be sealed. Instead, Defendants purport to explain that they have filed the Motion to Seal
 5 “in an abundance of caution because [they] do not argue [the slide deck is] necessarily
 6 ‘confidential’ nor required to be sealed.” (Dkt. No. 110 at 2.) Contrary to Defendants’
 7 suggestion, courts do not seal documents “in an abundance of caution,” but instead require the
 8 moving party to satisfy a “high threshold . . . to support secrecy.” *Kamakana*, 447 F.3d at
 9 1180. In short, Defendants have not “articulated compelling reasons supported by specific
 10 factual findings,” and as a result, the Court should deny their Motion. *Id.* at 1178.

11 **CONCLUSION**

12 For the above reasons, the Court should deny the Defendants’ Motion to Seal.

13
 14 DATED this 14th day of February, 2025.

15 **HUSCH BLACKWELL LLP**

16 /s/ Patrick M. Harvey

17 JAMES PATRICK SHEA

18 Nevada Bar No. 405

19 BART K. LARSEN

20 Nevada Bar No. 8538

21 KYLE M. WYANT

22 Nevada Bar No. 14652

23 SHEA LARSEN

24 1731 Village Center Circle, Suite 150

25 Las Vegas, Nevada 89134

26 Telephone: (702) 471-7432

27 Fax: (702) 926-9683

28 Email: jshea@shea.law

blarsen@shea.law

kwyant@shea.law

JENNIFER E. HOEKEL

Nevada Bar No. 12775

¹ The slide deck was produced by the Defendants, and they have not designated it as confidential.

jennifer.hoekel@huschblackwell.com
HUSCH BLACKWELL LLP
8001 Forsyth Boulevard, Suite 1500
St. Louis, Missouri 63105
Telephone: 314.480.1500
Facsimile: 314.480.1505

And

PATRICK M. HARVEY
Admitted Pro Hac Vice
Patrick.Harvey@huschblackwell.com
HUSCH BLACKWELL LLP
511 North Broadway, Suite 1100
Milwaukee, WI 53202
Telephone: 414.273.2100
Facsimile: 414.223.5000

Attorneys for Plaintiff
James V. Deppoleto Jr.

CERTIFICATE OF SERVICE

1
2 1. On February 14, 2025, I served the following document(s): **PLAINTIFF'S**
3 **BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE**
4 **TO FILE DOCUMENTS UNDER SEAL**

5 2. I served the above document(s) by the following means to the persons as listed
6 below:

7 ☒ a. ECF System:

8 On all parties appearing, receiving, and requesting notice.

9 ☐ b. United States mail, postage fully prepaid:

10 ☐ c. Personal Service:

11 I personally delivered the document(s) to the persons at these addresses:

12 ☐ For a party represented by an attorney, delivery was made
13 by handing the document(s) at the attorney's office with a clerk or other person in
14 charge, or if no one is in charge by leaving the document(s) in a conspicuous place
15 in the office.

16 ☐ For a party, delivery was made by handling the document(s)
17 to the party or by leaving the document(s) at the person's dwelling house or usual
18 place of abode with someone of suitable age and discretion residing there.

19 ☐ d. By direct email (as opposed to through the ECF System):
20 Based upon the written agreement of the parties to accept service by email or a
21 court order, I caused the document(s) to be sent to the persons at the email
22 addresses listed below. I did not receive, within a reasonable time after the
23 transmission, any electronic message or other indication that the transmission was
24 unsuccessful.

25 ☐ e. By fax transmission:

26 Based upon the written agreement of the parties to accept service by fax
27 transmission or a court order, I faxed the document(s) to the persons at the fax
28 numbers listed below. No error was reported by the fax machine that I used. A
copy of the record of the fax transmission is attached.

☐ f. By messenger:

I served the document(s) by placing them in an envelope or package addressed to
the persons at the addresses listed below and providing them to a messenger for
service.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 14, 2025.

By: /s/ Patrick M. Harvey